



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2045 OF 1995

KANGONDI FARMERS CO-OP.

SOCIETY LTD.....PLAINTIFF/APPLICANT

VERSUS

J.K. GATUGUTA & CO.

ADVOCATES.....DEFENDANT/RESPONDENT

RULING

1. The subject matter of this ruling is the motion dated 8.4.2016 taken out by Milka Wanjiru Gatuguta the administrator of the estate of Joseph Gatuguta, deceased the defendant herein. In the aforesaid motion the applicant sought for the following orders:

- 1. THAT this application be certified as urgent and the same be heard exparte in the first instance.***
- 2. THAT pending the inter partes hearing and determination of this Application this Honourable court be pleased to stay the orders issued on the 31st day of March 2016 wherein Warrant of Arrest was issued against the Applicant.***
- 3. THAT this Honourable court be pleased to review and vacate in their entirety the orders issued on 31st March, 2016 wherein warrants of arrest were issued against the Defendant.***
- 4. THAT this Honourable court declares the execution proceedings of the decree dated 10th May, 2001 as a nullity and illegal as the Plaintiff is time barred by statute of Limitation of Actions Act Chapter 22 Laws of Kenya from executing the decree herein.***

2. The motion is supported by the affidavit sworn by the aforesaid administratrix. When served, Kangondi Farmers Co-op. Ltd., the Plaintiff herein, filed the replying affidavit of its secretary, Michael Njoroge Gitaka to oppose the motion. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the motion disposed of by written submissions.

3. Upon considering facts deponed, the affidavit of service of Benson Karanja, the Process Server and upon hearing the process Server in cross-examination, this court granted prayer 3 of the motion. Therefore the issue which basically remained for this court's determination is prayer 4. The question is whether or not the execution proceedings of the decree dated 10th May 2001 should be declared null and void for being time barred by virtue of section 4 (4) of the limitation of Actions Act.

4. I have considered the grounds stated on the face of the aforesaid motion and the facts deponed in the affidavits filed in support and against the application.

I have further considered the rival submissions. It is the submission of the Defendant/Applicant that the decree lapsed by virtue of S.4(4) of the Limitation of Action Act. The Defendant pointed out that by the time the Plaintiff purported to execute the decree, more than 12 years had lapsed from the date of its issuance.

5. The Plaintiff on the other strenuously resisted the motion arguing that it took time for the administratrix to take out letters of administration hence delaying the Plaintiff from executing the decree. There is no doubt that the decree was issued on 10th May 2001 and there is no evidence that the Plaintiff attempted to execute the same while the late Joseph K. Gatuguta was still alive.

6. It is also not in dispute that Joseph Gatuguta passed away on 29th December 2009. There is no evidence that the Plaintiff attempted to take out citation proceedings against the deceased's estate. The Plaintiff, instead bid its time until Milka Wanjiru Gatuguta, the administratrix of the estate of Joseph Gatuguta, deceased, took out letters of administration and attempted to execute the decree.

7. After a careful consideration of the dispositions by the parties, it is clear in my mind that neither the deceased nor the administratrix of the estate of Joseph Gatuguta, deceased played a role in frustrating the execution of the decree until the lapse of statutory period of twelve years. The provisions of section 4 (4) of the Limitation of Actions Act expressly states:

“An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”

8. This being the case, the Plaintiff/Respondent is subsequently barred from executing the decree dated 10th May, 2001 by law.

It would appear the court was not given the discretion to extend time. In my humble view, I think the defendant's request cannot therefore be resisted. Consequently, I declare that the decree issued on 10.5.2001 has expired by effluxion of time by virtue of Section 4 (4) of the Limitation of Actions Act hence the same is null and void.

9. In the circumstances of this case, a fair order on costs is to direct which I hereby do, that each party meets its costs.

Dated, Signed and Delivered in open court this 20th day of December, 2016.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant